

## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

50921

FILE: B-184363

DATE:

July 18, 1975

MATTER OF:

A. J. Fowler

97362

## DIGEST:

Question concerning small business size status of bidder is not for consideration since conclusive authority over the question is vested by statute in SBA.

A. J. Fowler protested against an award to Midland Maintenance, Inc.. under invitation for bids No. DABT39-75-B-0058, issued by Headquarters, United States Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma.

Fowler contends that Midland is not a small business concern within the meaning of the Small Business Administration (SBA) regulations as one of its affiliates, Inland Service, is a large business. Mr. Fowler attached to the protest a determination by the Oklahoma City office of the SBA that, for the instant procurement, Midland Maintenance, Inc., is a small business.

Pursuant to 15 U.S.C. § 637(b)(6) (1970), the Small Business Administration is empowered to determine a business concern's size status for procurement purposes. Offices of the Government having procurement powers must accept as conclusive any determination reached by SBA as to which concerns are to be designated as small business. In discharge of this responsibility, SBA has promulgated regulations which have the force and effect of law. See Otis Steel Products Corporation v. United States, 161 Ct. C1. 694 (1963); part 121 of chapter I of the Code of Federal Regulations (C.F.R.), title 13 (1974).

Section 121.3-4 (1974), "Size determinations," states, in pertinent part, that:

"Original size determinations shall be made by the Regional Director, or his delegatee, serving the region in which the principal office of the concern (not including its affiliates) whose size is in question is located, \* \* \*.

Such determination shall be final unless appealed in the manner provided in § 121.3-6. For the purpose of Government procurements or sales a size determination shall be made only in the event of a protest pursuant to § 121.2-5, \* \* \*."

Section 121.3-6(a) (1974) provides that the Size Appeals Board shall review appeals from determinations made pursuant to §§ 121.3-4 and 121.3-5 (1974) and shall make final decisions as to whether such determinations should be affirmed, reversed or modified. Sections 121.3-6(b)(1)(i) and (ii) (1974) provide that an appeal may be filed with the Size Appeals Board by any concern or interested party which has been adversely affected by a decision of a regional director, his delegatee, or by the Associate Administrator for Financial Assistance. The time for filing an appeal is set forth in 121.3-6(b)(3)(i)(1974). An opportunity for reconsideration by the Size Appeals Board is provided in \$121.3-6(g)(5)(1974) which states that the decision of the Size Appeals Board shall constitute the final administrative remedy of SBA. Armed Services Procurement Regulation (ASPR) §§ 1-703(b)(1) and (3) (1974 ed.) repeat the provisions of 13 C.F.R. § 121.3-5 (1974) and § 121.3-6(b)(3)(i) (1974), respectively, recited above. When viewed in conjunction with 15 U.S.C. § 637(b)(6) (1970) and ASPR, the SBA regulations clearly establish it as the sole adjudicator of the size standard issue in question. See Wil-Da Mechanical & Electrical Co., Inc., **B-1**84034, June 19, 1975; 53 Comp. Gen. 434, 435 (1973); B-181511, July 15, 1974; and B-182548, November 20, 1974.

In view of the foregoing, this matter is not properly for consideration by the General Accounting Office. Accordingly, we are closing our file on the matter without consideration of the merits of the protest.

Paul G. Dembling General Counsel